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| 10/796,162      | 03/09/2004  | James D. Welch       |                     | 3028             |

7590 11/16/2007  
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| EXAMINER |
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POND, ROBERT M

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| ART UNIT | PAPER NUMBER |
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3625

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11/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/796,162

Applicant(s)

WELCH, JAMES D.

Examiner

Robert M. Pond

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The Applicant amended claims 1, 12, 19 and 23. All pending claims 1-27 were examined in this non-final office action necessitated by new grounds of rejection.

The Applicant is reminded that twice-rejected claims are eligible for appeal.

### ***Response to Arguments***

Applicant's arguments, see Remarks, filed 14 August 2007, with respect to the rejection(s) of claim(s) 1-27 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Audible.com and supporting references. The discovery of prior art not previously considered was compelling enough to warrant a new grounds of rejection.

Arguments based on Dargao in combination with Allison and Lawcast are moot. Darago, Allison and Official Notices were withdrawn. In light of the newly cited prior art, Lawcast provides pertinent teachings relating to types of law related area content. The technological deficiencies cited in Lawcast are overcome by Audible.com and BW. The combination of Audible.com and BW teach and suggest delivering continuing education, continuing legal education and updated topics of interest in audio format over the Internet to a user's personal computer or to mobile audio player that can be used anywhere-anytime.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

- 1. Claims 1, 6, 7, 9-12, 14, 19 and 21-27 are rejected under 35 USC 103(a) as being unpatentable over Audible.com (a collection of prior art documenting Audible, Inc. business methods cited in PTO-892, Items: U pages 1-3, and V pages 1-11) in view of BW (PTO-892, Item: X, pages 1-2) further in view of Lawcast (Paper #20070102, PTO-892, Item: V, pages 1-2).**

Audible.com teaches Audible, Inc., the Wayne, N.J.-based company is revolutionizing the distribution of content by enabling users for a fee to download material from its World Wide Web site that they can play back with the portable Audible player. Audible.com teaches Audible, Inc. having three main sources of revenue streams. To support its first revenue stream, the delivery of audiobooks over the Internet, Audible has deals with more than 80 audiobook publishers whose works it compresses and encodes for release over the Internet at the same time the books hit the retail shelves. The second content area (i.e. revenue stream) has time-sensitive information that may or may not have existed previously in audio form. It is this category, audio versions of newspapers, magazines, and journals, and radio broadcasts that can be listened to according to the user's schedule. The third portion of Audible's business is contracts with corporations that want to communicate proprietary messages through the Audible system. Audible will encode the corporation's audio content and secure it

on Audible's servers. Audible is targeting the financial, technology, and pharmaceutical industries and adds that several Fortune 500 companies are testing the concept. Audible.com teaches a user listening to a Harvard history lecture, listening to a conference on Internet technology trends or hearing the Terry Gross interview with a favorite author. U: see at least pages 1-2; V: see at least pages 1-2. Audible.com further teaches:

- a. an information provider providing an internet web site; delivers audio content via a Internet web site to a user's computer or to a portable audio player. "Eliminates piles of physical cassettes cluttering the floor of a car." The user can listen to Internet delivered audio content while "commuting, exercising, gardening, doing the dishes -- or whatever." U: see at least page 1; V: see at least pages 4-6.
- b. said information provider making periodically updated audio format professional continuing education information, delivers time-sensitive information in audio format, such information being a daily Internet business report (please note: periodic and updated) (U: see page 2), professional training (e.g. Harvard Business School Publishin) (V: see at least page 4), instant authoring and transmission of up-to-the-minute, need-to-know information and training materials (V: see at least page 3), available from audio information format machine readable storage via said web site, compresses and encodes for download to a personal computer or audio player from the website server (U: see at least page 1; V: at least

page 6), in topical categories, topical categories (e.g. mystery, personal development, spirituality, drama/poetry, mystery, biography/history, business/finance, fiction) (V: see at least pages 4, 9 and 10), and at least impliedly agreeing to provide a service of periodically updating the content thereof a continuing multiplicity of times, wherein the content of each update is primarily focused on developments since the preceding update, rather than on overcoming identified deficiency or establishing basic education; delivers time-sensitive information in audio format, such information being a daily Internet business report (please note: periodic and updated), information technology newsletters and three-times-a-day version of The Wall Street Journal containing topics included in the daily print editions and other unique information (U: see page 2); providing up-to-date audio content (V: see at least page 11). Please note interpretation: The daily Internet business reports and three-times-a-day Wall Street Journal audio editions are focused on updating preceding events. No disclosure of tests or quizzes being required to attest to achieving basic education or overcoming a specific competency deficiency.

said audio format being tagged with an identifying date and/or topic. User chooses topical categories and titles. Although Audible.com does not mention identifying date, it would have been obvious to one of ordinary skill in the art at time the invention was made to audibly tag periodically updated audio content such as a daily Internet Business report or

newspaper with an identifying date and/or topic, because a person of ordinary skill in the art has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense. Obviousness rationale from Supreme Court Decision in KSR International Co. v. Teleflex Inc. For example, visual hardcopy published books, reports and newspapers used by Audible.com are notoriously known to print the date of publication and a person of ordinary skill in the art has good reason to convey to the listener the date of the daily report to reflect the time perspective of the updated visual hardcopy report converted to audio.

- c. making access to said audio format professional continuing education information available, via said web site to clients by a selection from the group consisting of: periodic subscription, monthly subscription (e.g. \$6.95) (U: see at least page 2), pay-per-access event, fee for individual program of \$1.95 to download (U: see at least page 2).
- d. said information provider allowing at least one client to receive said audio format professional continuing education information via said web site by, using an internet accessing means, accessing said web site, and providing payment, as noted above, via a selection from the group consisting of: proof of paid subscription; Audible.com sends an e-mails to subscribers alerting them whenever a new program in their service is

available (please note: recognition of unique e-mail address is sufficient of proof of subscription) (U: see at least page 2), and presenting payment means; Inherent in Audible.com are the structures necessary to permit presenting payment means. For example, Audible.com charges a fee for its audio content to be downloaded over the Internet to a subscriber's PC or audio player (U: see at least page 2), and identifying a professional continuing education information topical category of interest, as previously noted, topical categories of interest can be accessed identifying professional continuing education, followed by said at least one paying client accessing, without requirement of intermediate steps, receiving audio format professional continuing education information in said topical category of interest; no intermediate steps, subscriber is notified that new content is available as noted above.

- e. said information provider updating the audio format professional continuing education information in the at least one client identified topical category of interest in step d, as previously noted above, and said at least one paying client in step d repeating step d after said audio format professional continuing education information is updated, and receiving the updated audio format professional continuing education information in said identified topical category of interest, email alerts to subscribers of new content (please note: updated content or first offering).  
said method being further characterized in that the information in said



client identified and received audio format professional continuing education is prepared to keep said client aware and informed of developments in the topical category and thereby maintain professional currency therein, to the exclusion of being prepared to train said client to overcome a specific documented professional competency deficiency or to provide basic education. Please note that this section of the claim element is an intended goal/benefit and overly narrative. The daily Internet business reports and three-times-a-day Wall Street Journal audio editions previously noted are not addressing basic education or a specific documented professional competency deficiency. No disclosure of tests or quizzes being required to attest to achieving basic education or overcoming a specific competency deficiency.

- f. said client, after step e, again accessing the audio format professional continuing education information originally provided in a practice of step d before the information is being updated and accessed in step e, by again practicing step d with the addition that the identifying date with which said updated audio format professional continuing education information was tagged is entered along with the identifying of a professional continuing education information topical category of interest; Although Audible.com does not mention again accessing the audio format information, it would have been obvious to one of ordinary skill in the art at time the invention was made to permit repeated access, because a person of ordinary skill in

the art has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense.

Obviousness rationale from Supreme Court Decision in KSR International Co. v. Teleflex Inc. For example, a subscription to the visual hardcopy version of the Wall Street Journal permits the subscriber in possession to repeatedly view/read the current edition. No disclosures in Audible.com state that audio-delivered content on a subscription basis is a one-time use. Furthermore, the pay-per-event user can repeatedly purchase the same content. No disclosures in Audible.com state that audio-delivered content on pay-per-event basis is a one-time use.

said method being further characterized in that the information in said client identified and received audio format professional continuing education is prepared to keep said client aware and informed of developments in the topical category and thereby maintain professional currency therein, to the exclusion of being prepared to train said client to overcome a specific documented professional competency deficiency or establishing basic education. Please note that this section of the claim element is an intended goal/benefit and overly narrative. The daily Internet business reports and three-times-a-day Wall Street Journal audio editions previously noted are not addressing basic education or a specific documented professional competency deficiency. No disclosure of tests or

quizzes being required to attest to achieving basic education or overcoming a specific competency deficiency.

Audible.com teaches and suggests all the above as noted under the 103(a) rejection and teaches i) delivering updated audio content over the Internet to a user's PC for PC use or for deployment to the user's mobile audio player (V: see at least pages 3 and 10), ii) delivering daily updated audio content containing information drawn from business reports and print editions of the Wall Street Journal, and iii) delivering topical audio content used for training, personal development and education for the individual or the employee to help turn downtime into productive time using either the PC or mobile audio player. V: see at least pages 2, 3 and 6. Although Audible.com does not mention delivering continuing professional education, BW teaches Lawline.com offering continuing legal education on the Internet in partnership with leading bar associations and other providers of legal education courses. BW teaches bar associations using Lawline.com as a course delivery tool to help their members fulfill annual continuing education requirements that lawyers must meet as a condition of retaining their license to practice (X: see page 1). BW teaches webcast courses making it possible for busy attorneys and paralegals to stay current in their practice areas at a time and place that is convenient for them. BW teaches the site combining audio and video webcasting with downloadable textual materials. BW further teaches Lawline.com having the network infrastructure and expertise to deliver or "stream" hundreds of live and on-demand audio and video programs

over the Internet or Intranets to hundreds of thousands of users, and by utilizing the power of the Internet can reach a much wider audience than has ever been possible, all at little or no cost. X: see page 2. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and methods of Audible.com to deliver continuing legal education content in audio format for lawyers in association with licensing bodies (e.g. bar associations) utilizing the power of the Internet to reach a much wider audience than has ever been possible, all at little cost as taught by BW, because the design incentives or market forces provided a reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness rationale from Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*

Although Audible.com does not mention displaying visual format materials and making them available on a video screen simultaneously with providing the audio information, BW on the other hand teaches the site combining audio and video webcasting with downloadable textual materials and delivering content over the Internet to reach a much wider audience than has ever been possible, all at little cost (X: see pages 1-2). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and methods of Audible.com to combine audio and video webcasts with textual materials and delivering content over the Internet to reach a much wider audience than has ever been possible, all at little cost as taught by BW, because

the design incentives or market forces provided a reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness rationale from Supreme Court Decision in KSR International Co. v. Teleflex Inc.

Although Audible.com does not mention live audio presentation, BW on the other hand teaches delivering live and on-demand audio and video content over the Internet to reach a much wider audience than has ever been possible, all at little cost. X: see page 2. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and methods of Audible.com to deliver live audio content over the Internet to reach a much wider audience than has ever been possible, all at little cost as taught by BW, because the design incentives or market forces provided a reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness rationale from Supreme Court Decision in KSR International Co. v. Teleflex Inc.

Audible.com and BW teach and suggest all the above as noted under the 103(a) rejection and teach i) delivering over the Internet published content and unique content in audio format as an improvement over using audio tapes or audio cassettes, ii) deploying continuing legal education over the Internet to be used on a personal computer or mobile audio player to help lawyers meet as a condition of retaining their license to practice, iii) delivering audio-formatted content on a variety of topics including education, personal improvement,

training, business/finance, technology and others, and iv) audio content formats including but are not limited to: Harvard history lecture (expert commentary), conference on technology trends (please note: expert commentary based on changes in technology), interviews, live broadcast, books and publications. V: see at least pages 2. Although Audible.com and BW do not mention specific law related areas, Lawcast on the other hand teaches delivering audio content to its subscribers using the traditional form of audio tapes. Lawcast further teaches Publisher Jason Meyer stating that LawCast is the first legal news service that "you don't have to read" and is "the first realistic answer to just having too much to read and too much information to process." Twice a month, subscribers receive a tape and a printed outline. Each tape is produced like a radio news show for lawyers, with anchors, reporters, commentators, headlines, digests of opinions in the applicable state and federal courts, and digests of legal stories from both the legal and lay media. Each edition's printed outline summarizes and cites every case, story and authority mentioned on tape. Vox Juris said that "Corporate Counsel LawCast" reports on national legal developments for in-house counsel. "Intellectual Property LawCast" covers patents, trademarks, copyrights, licensing, trade secrets and related topics for intellectual property professionals. "Employment and Labor LawCast" covers employment legislation and regulation, rules and caselaw at the state and federal levels. "New Jersey LawCast" covers new case law, legislation, rules, regulations, notices to the bar and "topical" legal news from New Jersey. Meyer said that editorial content

focuses on "substantive legal developments" and analyzes how those developments "can affect a lawyer's practice." Subscribers hear experts, lawmakers and their colleagues "share their experiences and expertise." Vox Juris also publishes "Quarterly Reports for New Jersey" in each of four specialties: tort and personal injury, family law, criminal law, and employment and labor law. Paper #20070102, V: see page 1. Therefore it would have been obvious to one of ordinary skill in the art at time the invention was made to modify the methods of Audible.com and BW to include multiple law related topics as taught by Lawcast, because the design incentives or market forces provided a reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness rationale from Supreme Court Decision in KSR International Co. v. Teleflex Inc.

- 5. Claims 2-5 and 13 are rejected under 35 USC 103(a) as being unpatentable over Audible.com (a collection of prior art documenting Audible, Inc. business methods cited in PTO-892, Items: U, pages 1-3 and V, pages 1-11), BW (PTO-892, Item: X) and Lawcast (Paper #20070102, PTO-892, Item: V, pages 1-2) as applied to claims 1 and 12, further in view of Boyers (PTO-892, Item: VV).**

Audible.com, BW, and Lawcast teach all the above as noted under the 103(a) rejection and teach bar associations using Lawline.com as a course delivery tool to help their members fulfill annual continuing education requirements that

lawyers must meet as a condition of retaining their license to practice. Although Audible.com and BW alone do not mention attestation using the Internet or completing a questionnaire to attest to grasping the information, Boyers on the other hand teaches professional associations grappling with the most appropriate mediums to convey information to their members to provide access convenience and flexibility. Boyers teaches Nebraska Continuing Legal Education (NCLE) delivering legal education audio content to its members via satellite. NCLE's Lilleoien believes audio is underused- "You can reach a good percentage with audio that you wouldn't have otherwise. As people appreciate time constraints, they may recognize that audio offers conveniences such as allowing them to each lunch in their offices while participating in the seminar." Boyers teaches the American Association of Critical-Care Nurses (AACN) offering continuing education online. IQNow, an AACN private network serves 400 subscribers who will be able to take continuing education tests (i.e. serves same purpose as questionnaire) online where one clicks on the answers, and when finished bounces back a message with immediate results to the test taker and provides AACN with a record of the results at the same time. AACN is also developing whole courses to offer online. VV: see at least pages 1 and 3-5. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and methods of Audible.com and BW alone to provide online testing and test results being received by a professional body as taught by Boyers because the design incentives or market forces provided a



reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness rationale from Supreme Court Decision in KSR International Co. v. Teleflex Inc. Bar associations could likewise utilize online testing of its members with test results being received by the bar associations to help members fulfill annual continuing education requirements that lawyers must meet as a condition of retaining their license to practice.

- 6. Claim 8 is rejected under 35 USC 103(a) as being unpatentable over Audible.com (a collection of prior art documenting Audible, Inc. business methods cited in PTO-892, Items: U, pages 1-3 and V, pages 1-11), BW (PTO-892, Item: X), and Lawcast (Paper #20070102, PTO-892, Item: V) as applied to claim 1, further in view of Rosenblum (PTO-892, Item: WW).**

Audible.com, BW, and Lawcast teach and suggest all the above as noted under the 103(a) rejection and teach i) interviews, expert commentary (Please note: the specification fails to define "Hyde-Park". For examination purposes it is assumed that it is a variation of a type of format previously disclosed in the cited prior art), and ii) Audible.com using a subscription-based payment model.

Although Audible.com alone does not mention subscriber-client advertising programming, Rosenblum on the other hand teaches Audible.com and Audio Highway competing in the audio content download market. Rosenblum further teaches Audio Highway's biggest advantage is that its downloads are free.

Audible charges listeners \$6.95 to \$9.95 to download audiobooks and \$1.95 to download radio programs, while Audio Highway listeners download for free but receive up to six minutes of advertisements per hour of content. (The ads are at the beginning and may be skipped.) The advertisements are geared to the interests of the individual listener, based on the type of audio he or she habitually selects. WW: see at least pages 1 and 3. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and methods of Audible.com alone to provide subscriber-client advertising programming as taught by Rosenblum, because the design incentives or market forces provided a reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness rationale from Supreme Court Decision in KSR International Co. v. Teleflex Inc.

- 4. Claims 15-18 are rejected under 35 USC 103(a) as being unpatentable over Audible.com (a collection of prior art documenting Audible, Inc. business methods cited in PTO-892, Items: U, pages 1-3 and V, pages 1-11), BW (PTO-892, Item: X) and Lawcast (Paper #20070102, PTO-892, Item: V, pages 1-2) as applied to claims 1 and 12, further in view of Katz (US 5,926,624 assigned to Audible, Inc.).**

Audible.com, BW and Lawcast teach all the above as noted under the 103(a) rejection and further teach i) a user downloading audio formatted content to a

user's personal computer and to a mobile audio player from an Internet web site, and ii) enabling easy access to archived audio information (V: see at least page3). Although Audible.com alone does not mention the client downloading the information accessed onto a recording means to enable maintaining a permanent library record, Katz on the other hand teaches the system and methods of Audible Inc.'s audio content delivery system including verifying access status of the user and a local library residing at a client computer which provides access to a subset of the archived digital information from the system's library server to used as storage of selected content and for searching, sorting, categorizing, and abstracting the locally stored content (see at least col. 16, lines 34-62). Therefore it would have been obvious to one of ordinary skill in the art at time the invention was made to modify Audible.com alone to implement permanent storage of a subset of the archived content from the system side at the client side as taught by Katz, because a person of ordinary skill in the art has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense. Obviousness rationale from Supreme Court Decision in KSR International Co. v. Teleflex Inc.

- 5. Claim 20 is rejected under 35 USC 103(a) as being unpatentable over Audible.com (a collection of prior art documenting Audible, Inc. business methods cited in PTO-892, Items: U, pages 1-3 and V, pages 1-11), BW**

**(PTO-892, Item: X) and Lawcast (Paper #20070102, PTO-892, Item: V, pages 1-2) as applied to claim 19, further in view of Sabludowsky (PTO-892, Item: UU).**

Audible.com, BW and Lawcast teach and suggest all the above as noted under the 103(a) rejection and teach browsing and searching for online content but do not mention keyword searching. On the other hand, Sabludowsky teaches online education, the use of audio, and performing keyword searches via search engines to find online classes and seminars (UU: see at least page 1 and 3). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and methods of Audible.com and BW alone to search education content using keyword searching as taught by Sabludowsky, because the design incentives or market forces provided a reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness rationale from Supreme Court Decision in KSR International Co. v. Teleflex Inc.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

PRN; "Broadcast.com and Audible announce partnership," PR Newswire, 17 August 1998, Proquest #33162901, 3pgs; teaches Audible.com and Broadcast.com announcing a partnership to mobilize Broadcast.com's live and on-demand audio programs via Audible.com's website and mobile audio player. W: see at least pages 1 and 2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

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free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Robert M. Pond', is positioned above the printed name.

Robert M. Pond  
Primary Examiner  
November 1, 2007